

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
NOVEMBER 18, 2014 AGENDA**

Subject:	Type:	Submitted By:
COMMUNICATION TOWERS — CONSULTING AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A resolution has been prepared to approve an agreement with Richard A. Comi d/b/a The Center for Municipal Solutions for the purpose of assisting, advising and representing the City to review and analyze applications for wireless communication facilities.

FISCAL IMPACT

A separate agenda item is proposed to amend the Master Fee Ordinance to add a fee to cover the cost of these services.

RECOMMENDATION

Approval.

BACKGROUND

The Center for Municipal Solutions (CMS) is a nation-wide company that reviews wireless tower applications for governments and other clients. The review of these facilities is highly technical, requires knowledge of federal regulations and someone with expertise in this area. CMS is independent of the wireless communication industry and has significant experience in reviewing applications for these facilities. Robert Naumann is a structural engineer who works for CMS and handles this area.

Sarpy County is using this consultant for their wireless telecommunication applications and to assist them with revising their zoning regulations. Bruce Fountain, Sarpy County Planning and Building Director, has recommended this consultant.

Applicants for these facilities would pay a fee to cover the cost of the review.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING AN AGREEMENT WITH RICHARD A. COMI DBA THE CENTER FOR MUNICIPAL SOLUTIONS FOR THE PURPOSE OF ASSISTING, ADVISING AND REPRESENTING THE CITY TO REVIEW AND ANALYZE APPLICATIONS FOR WIRELESS COMMUNICATION FACILITIES.

WHEREAS, the City Council of the City of La Vista has determined that the selection of a consultant for assisting, advising and representing the City to review and analyze applications for wireless communication facilities is necessary; and

WHEREAS, the fee to cover the cost of these services is in the Master Fee Ordinance; and

WHEREAS Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska do hereby approve an agreement with Richard A. Comi dba The Center for Municipal Solutions for the purpose of assisting, advising and representing the City to review and analyze applications for wireless communication facilities.

PASSED AND APPROVED THIS 18TH DAY OF NOVEMBER, 2014.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

AGREEMENT

This agreement made and entered into this ____ day of _____ 2014 by and between RICHARD A. COMI d/b/a THE CENTER FOR MUNICIPAL SOLUTIONS (herein after referred to as Consultant) (mailing address: 70 Cambridge Drive, Glenmont, New York 12077) party of the first part, and City of La Vista, a Nebraska municipal corporation (hereinafter referred to as Client) (mailing address; 8116 Park View Boulevard, La Vista, Nebraska 68128) party of the second part.

Consultant and Client, for the consideration named, hereby agree as follows:

1. PURPOSE

Client hereby retains Consultant for the purpose of assisting, advising and representing Client on matters relating to the preparation of a Wireless Telecommunications Facilities Local Ordinance for Client, and reviewing and analyzing applications received by Client for Wireless Telecommunications Facilities, in accordance with all applicable laws, rules and regulations.

2. SPECIFIC SERVICES: LOCAL ORDINANCE

As soon as possible after the execution of this agreement, Consultant shall prepare and deliver to Client for use by Client a comprehensive Wireless Telecommunications Facilities Local Ordinance (hereinafter referred to as Ordinance). Subsequently, in consultation with designated officials of Client, Consultant shall devote up to five (5) hours to draft and deliver to Client, as may be requested, legally permissible revisions to the Ordinance, prior to the public hearing relating to the adoption of the Ordinance. Consultant shall attend one meeting with Client, which Client will schedule in connection with the adoption of the Ordinance.

3. SPECIFIC SERVICES: SERVICES DURING PROCESSING OF APPLICATIONS

The Consultant shall furnish appropriate Wireless Telecommunications Facilities siting assistance and advice to Client and Client officials involved in the processing of applications for Wireless Telecommunications Facilities, and, in connection therewith, shall:

- (a) Review all applications filed with Client for Wireless Telecommunications Facilities;
- (b) Assist and advise Client as regards all applications, to include attending meetings with the Applicants and/or Client's staff and/or officials as required;
- (c) Recommend in writing to Client whether a particular application should be approved or disapproved, and set forth in writing the reasons for such approval or disapproval; and,
- (d) Inspections of the construction of the facility and in writing recommend when/if the certificate of compliance should be issued.
- (e) Consultant shall, in conjunction with the Client's Municipal Attorney, assist in the negotiation of all leases for the use of Client-owned property or facilities by wireless communications entities or persons at its normal hourly rate, with such cost to be paid out of the Applicant's escrow deposit or a written commitment by the potential lessee to reimburse the Client for the cost reasonably incurred on behalf of Client. The consultant is not a real estate broker or agent. All real estate brokerage services, if any, shall be performed by the Client or the Client's attorney.

4. TIMES AND ATTENDANCE: COOPERATION BY CLIENT

Consultant shall perform the services described herein in as expeditious a manner as is reasonably possible and with due consideration of the time requirements of Client. Client recognizes that the timing of the performance of Consultant's services may be affected by previous commitments to other clients (including the delivery of promised services and work product and previously scheduled meetings), and situations normally and traditionally deemed to be matters of a force majeure nature, including those influenced by the weather, strikes, or power outages.

Client agrees to cooperate with Consultant, as needed, and to provide Consultant with copies of any records, documents and other information needed for the fulfillment of this agreement on a timely basis. Client further agrees to provide Consultant with access to appropriate officials and/or employees of Client, as may be needed in the fulfillment of the agreement. Moreover, both parties understand and agree that mutual accountability and responsiveness is critical to the successful completion of the project, and therefore both shall always make their best faith efforts to be accountable and promptly responsive to each other.

5. COMPENSATION

In payment for the services to be performed hereunder by Consultant, Client shall make payments to the Consultant as follows:

- (a) For the services to be performed by the Consultant pursuant to paragraph 2 hereof, there shall be no charge. Time beyond five hours customizing the draft ordinance or attendance at more than one meeting related to the customization, consideration or adoption of the Ordinance shall be billed at the Consultant's normal hourly rate. Based on prior experience, Consultant feels that performance described in paragraph 2 above should be sufficient to prepare an Ordinance that will meet Client's needs. Therefore, Consultant anticipates that, absent extraordinary circumstances, there will be no charge to Client for the preparation of the Ordinance.

(b) For the services to be performed by the Consultant pursuant to paragraph 3 hereof, Client shall pay Consultant its normal published hourly rate (which at the date of this agreement is \$250.00 per hour, but is subject to reasonable change over time as agreed by the City Administrator of Client) for each hour of time devoted by Consultant to the performance of such services, provided, however, that for time traveling by Consultant in conjunction with the performance of such services Client shall pay Consultant for actual travel time up to eight hours per day at only 50% of the Consultant's normal published rate. (The draft Ordinance as initially provided to Client shall require an applicant to pay, in advance of any work related to the application or the application process, a sum to be put into an escrow account to assure that Client is reimbursed by the applicant for the amounts payable by Client hereunder to the Consultant.)

(c) Consultant shall invoice Client regularly, but no less frequently than monthly, after services have been performed, for any compensation payable pursuant to paragraph 5(b) of this agreement. Such invoices that are undisputed by the Client shall be due and payable in no case later than thirty (30) days after receipt.

6. REIMBURSEMENT FOR EXPENSES

For services performed hereunder, Client shall reimburse Consultant, for out-of-pocket expenses for the following items:

(a) Travel-related costs such as airfare, car rental, night lodging accommodations and meals consumed while on-site or enroute; (b) Expedited or overnight delivery service; (c) Any other reasonably necessary expenses directly related and attributable to the fulfillment of this agreement.

Consultant's requests for expense reimbursement shall be included in Consultant's invoice at actual cost, with no markup.

7. TERM OF AGREEMENT; TERMINATION

This agreement shall be for a period of three (3) years commencing on the date set forth at the top of page one (1) of this agreement. After the three (3) year period, the agreement will continue automatically on a month-to-month basis, unless terminated in writing by either party with sixty (60) days notices. Notwithstanding anything in this agreement to the contrary, this agreement can be terminated at any time by Client providing at least thirty (30) days written notification to Consultant. There will be no additional billing after this agreement terminates.

8. STATUS OF CONSULTANT

Consultant and Client agree that in the performance of Consultant's services hereunder, Consultant shall not be deemed to be an employee of Client for any purpose whatsoever, nor act under Color of State.

9. NOTICES

Any and all notices, invoices, and payments required hereunder shall be addressed to the parties at their respective addresses set forth in page 1 hereof, or to such other address as may hereafter be designated in writing by either party hereto.

10. CONSTRUCTION OF AGREEMENT

This agreement shall be construed and interpreted in accordance with the Laws of the State of Nebraska.

11. COMPLETE AGREEMENT; MODIFICATION

There are no terms, conditions or obligations other than those contained herein, and there are no written or verbal statements or representations, warranties or agreements with respect to this Agreement that have not been embodied herein.

This agreement constitutes the complete understanding of the parties with respect to the subject matter hereof. No modification or amendment of any provisions of this agreement shall be valid unless in writing and signed by both parties.

IN WITNESS THEREOF, the Consultant and Client by individuals duly authorized to do so, have signed this agreement, the day and year first above written.

CONSULTANT

By: *R.A. Comi*

R.A.Comi
The Center for Municipal Solutions

CLIENT

By: _____

_____ (printed)

Title: _____